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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re DESTINY M., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B188621
(Super. Ct. No. 1121432)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

GABRIELA V.,

Defendant and Appellant.

Gabriela V. (mother) appeals from an order terminating her parental rights to her daughter Destiny M. after a hearing under Welfare and Institutions Code section 366.26.¹ She argues that it would be detrimental to Destiny to sever their parent-child relationship and claims that the court should have selected a less restrictive permanent plan than adoption. We affirm.

¹ All statutory references are to the Welfare and Institutions Code.

FACTS AND PROCEDURAL BACKGROUND

Mother gave birth to Destiny in 2000 and to her younger sister Esperanza in 2003. In early 2004, Santa Barbara County Child Protective Services (CPS) received two referrals, the first arising from a crack pipe that was found in mother's car during a traffic stop, the second based on mother's lack of a stable home and her practice of leaving her children with her parents without providing for their support. Mother had a history of drug abuse.

In May 2004, police officers found mother and her children sitting in a car by the side of the road. Mother was crying and had no identification. She told the officers she had been up all night partying and drinking. Mother became very confrontational after a social worker was summoned to the scene to take the children into protective custody, but she was eventually subdued and arrested for being under the influence of a controlled substance.

Destiny and Esperanza were declared dependents of the juvenile court under section 300, subdivision (b), removed from mother's custody and placed with their maternal grandparents. Mother was given a reunification plan that required her to enter drug treatment, to obtain stable employment and housing and to complete parenting classes. Reunification services were terminated at the six-month review hearing held in February 2005 because mother had not complied with her plan. Destiny's case was set for a further hearing and her father was given an additional six months of reunification services. Esperanza's case was set for a permanency planning hearing under section 366.26.

On April 21, 2005, mother filed a petition under section 388 seeking additional reunification services based on her changed circumstances. She did not request the immediate return of her children, but presented evidence that she had graduated from an inpatient drug program, had been sober since October 2004 and had taken steps to improve her parenting skills. She was having regular monthly visits as well as frequent telephone contact. CPS opposed the petition, arguing that the children were doing well in their grandparents' home and that mother's efforts, while

commendable, were too recent to demonstrate that an extension of services would be in the children's best interests. The juvenile court denied the petition, and this court affirmed that order in an unpublished opinion. (*In re Destiny M. & Esperanza D.* (March 28, 2006, B184713).)

Mother's parental rights to Esperanza were terminated in a hearing under section 366.26. In December 2005, the court held a section 366.26 hearing to determine the permanent plan for Destiny. It was undisputed that Destiny was adoptable and was doing very well in the home of the maternal grandparents, who wanted to adopt her. CPS argued that the court should terminate mother's parental rights and select adoption as the permanent plan. Mother argued that it would be detrimental to Destiny to terminate parental rights because the two of them had a beneficial relationship within the meaning of section 366.26, subdivision (c)(1)(A), which provides for an exception to the statutory presumption favoring adoption when the child would benefit from continuing the parental relationship.

CPS presented a social worker's report describing mother's recent contacts with Destiny. Mother had been granted monthly supervised visits and had called Destiny frequently, but telephone contact was suspended after the grandparents reported that mother had yelled at Destiny and ridiculed her during some conversations. Mother denied doing so and suggested that her sister had made the report because she was trying to control mother. She also explained that she and the grandmother had a fight over something trivial, and that was when she got a letter from CPS notifying her that her phone visits would be supervised.

Mother also acknowledged that she had been placed in custody on a probation violation earlier in the month after testing positive for cocaine. She claimed she had been raped while she was intoxicated after drinking alcohol but denied that she had ever used cocaine. Mother testified that the investigation of this was still pending.

The court found clear and convincing evidence that Destiny was adoptable. It concluded the beneficial relationship exception to adoption did not apply: "It's clear that Destiny is adoptable and it's clear that she is in a good home. I think mother even

acknowledges that. She said in the past how good the grandparents are with Destiny and they're providing well for her. [¶] And, so, the only way I don't get to adoption is if one of the exceptions to that is met. And the parental exception is not a blanket statement or not a blanket exception that it's not going to go forward simply because you have a parent that says, 'I'm a parent and the child has a bond with me,' because there is always some connection between a child and a parent. [¶] And it's a matter of balancing the connection, the bond, the relationship and the need of the child for permanency, that is afforded a child by adoption. So, you have to -- it's almost like a balanced scale you look at. [¶] The evidence that's presented is evidence of the connection that she visited the child. Although, it's not what I would consider really strong visitation or connection. There is not much more. I don't have something demonstrated of a strong parental role that mother is playing in Destiny's life. [¶] She is the mom. But it's much more than just being the mom. It's got to play the role of the mom and I don't see that in the evidence that's been presented to me. If I'm weighing the benefit of permanency versus the evidence that has come in on mother's role in this, it's not outweighed. The permanency is to be favored. [¶] I don't see a significant, positive, emotional attachment from the child to parent. . . ."

DISCUSSION

Mother contends the court should not have terminated her parental rights because she has maintained regular visitation with Destiny, who would benefit from continuing their relationship. She argues that the court should have instead ordered guardianship with the grandparents as the permanent plan. We disagree.

When a child cannot be returned to his or her parents and is likely to be adopted, the court must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental under one of four specified statutory exceptions. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) One such exception is when "[t]he parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(A).)

The parent has the burden of demonstrating that the beneficial contact exception applies. (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) It is not enough to show that the child would receive some incidental benefit from a continued relationship with the parent. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Rather, the relationship must promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new adoptive parents. (*Ibid.*) In other words, "the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Ibid.*; see also *In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

Courts are divided as to the standard of review to be applied to a finding on the beneficial conduct exception. Most have applied a substantial evidence standard, which asks whether there is any substantial evidence, contradicted or otherwise, supporting the trial court's ruling. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) Others have utilized the abuse-of-discretion standard, which asks whether the trial court exceeded the bounds of legal discretion by making an arbitrary, capricious or patently absurd ruling. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) Under either standard, the juvenile court's ruling in this case must be upheld.

The evidence at the section 366.26 hearing showed that while Destiny wished to continue seeing her mother, their recent contacts had been infrequent and problematic. When mother testified at trial, she glossed over the reports that she had yelled at Destiny and ridiculed her over the telephone. Mother had recently been placed in custody after testing positive for cocaine, although she adamantly denied ever using that drug. She had not been involved in Destiny's day-to-day care for a significant period of time and had not fully availed herself of visitation opportunities. The juvenile court

reasonably concluded that mother's relationship with Destiny was not so beneficial that it outweighed Destiny's interest in a secure, permanent placement.

The judgment is affirmed.

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COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Maureen L. Keaney, under appointment by the Court of Appeal, for
Defendant and Appellant.

Stephen Shane Stark, County Counsel, Laura Ornelaz, Deputy County
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